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PRACTICE—BIAS OF JUDGE—POWER OF JUDGE TO PASS ON HIS OWN DISQUALIFICATION.—The defendants were indicted on a charge of violating the Espionage Act. They filed an affidavit under section 21 of the federal Judicial Code charging the presiding judge with bias and prejudice and alleging specifically his remarks at previous trials of defendants of German extraction. The judge denied the motion, based on the affidavit, for the assignment of another judge and proceeded with the trial, which resulted in conviction. *Held*, that the presiding judge had power to pass on the legal sufficiency of the affidavit, but not on the truth of the facts constituting his disqualification. Day, Pitney, and McReynolds, JJ., dissenting. *Berger v. United States* (1921) 41 Sup. Ct. 230.

The decision of the Supreme Court upholds the previous interpretation of section 21 by the federal courts. *Henry v. Speer* (1913, C. C. A. 5th) 201 Fed. 869. The tendency of the state courts is also to limit the power of the judge to pass on the legal sufficiency of the affidavit. *Woodsmall v. State* (1914) 181 Ind. 613, 105 N. E. 155; *State v. District Court* (1914) 49 Mont. 247, 141 Pac. 659. A few states require him to decide on his own disqualification. *In re Friedman's Estate* (1915) 171 Calif. 431, 153 Pac. 918; *Kelly v. Ferguson* (1911) 5 Okl. Cr. App. 316, 114 Pac. 631. The rule in the particular jurisdiction, of course, depends on the language of the statute. For a general discussion of the basis of disqualification of judges see (1921) 30 YALE LAW JOURNAL, 305.

TORTS—NEGLIGENCE—DUTY OF RAILROAD TO KEEP A LOOKOUT FOR ANIMALS.—The plaintiff's sheep were being driven across the railroad track when a passenger train ran into them and killed twenty-eight. The herder in charge had miscalculated the time of the train. The sheep had been grazing on the public domain and were being driven across the tracks for water. Being out in the open country, there was no regular crossing. *Held*, that the herder was guilty of contributory negligence and that, although he was a mere licensee, there was no duty on the company to keep a lookout. *Cummings v. Hines* (1921, Utah) 194 Pac. 901.

If the sheep had been seen on the tracks before and the herder was a licensee, even those cases which hold that a railroad is under no duty to keep a lookout for trespassers would not support the conclusion of the court in the instant case. See (1920) 29 YALE LAW JOURNAL, 697. For a collection of cases see 24 L. R. A. (N. S.) 858, note. Under the last clear chance doctrine it seems that the plaintiff should have recovered, since the engineer had about a half mile of straight track in which to see the sheep. See COMMENTS (1920) 29 YALE LAW JOURNAL, 542, 896, 555; 55 L. R. A. 418, note.

TORTS—NEGLIGENCE IN PERFORMANCE OF CONTRACT—INJURY TO THIRD PARTY.—The defendants had been engaged by a vendor of beans to weigh a quantity which they knew the plaintiff had bought and had contracted to pay for according to the defendants' certificate of weight. This the defendants negligently certified to be more than it actually was, and the plaintiff, in consequence, overpaid the vendor. He then brought an action of tort for this negligence. *Held*, that the defendants were liable. *Glanzer v. Shepard* (1920, App. Div.) 186 N. Y. Supp. 88.

See COMMENTS, *supra*, p. 607.